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May 25, 2022

**By: Electronic Filing (ECF)**

Honorable Robert D. Drain  
United States  
Bankruptcy Court SDNY  
300 Quarropas Street  
White Plains, NY 10601-4140

Re: **96 Wythe Acquisition LLC; Case No. 21-22108 (RDD)**

Dear Honorable Judge Drain:

My firm is currently in the process of appearing as co-counsel to Barry Haberman, Esq., on behalf of the Creditor, Grandfield Realty Corp., as trial counsel, because I have been representing Grandfield against the Debtor and other parties since August 11, 2014, in Kings County Supreme Court, and I have specialized in the practice of Construction Law for the better part of 27 out of my 32 years of practice.

I am writing this letter to request an extension of any hearing date that requires Grandfield to essentially prepare and prove its case by June 2, 2022.

I also understand that the Debtor is contesting liability, when the NYC Department of Buildings has already determined that Debtor's work caused the damages to Grandfield's property (see public violation and finding from the NYC Dept. of Buildings dated September 4, 2013, attached hereto at **Exhibit A**, that

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Debtor's hotel development project work caused the damages to the Creditor's building).

In any event, June 2, 2022, is just logistically impossible for Grandfield, given the complexity and nuances of construction law, which is intertwined with structural engineering calculations, the current economic realities of material and labor shortages and pricing, and the need to coordinate the schedules and prepare declarations from at least five (5) experts, at least 4 separate fact witnesses, approximately 4-6 adverse witnesses and cull out from the state court file (which consists of probably over 10,000 documents exchanged in discovery), the appropriate exhibits for this hearing. The Creditor- Grandfield's witnesses and what their testimony would generally encompass are listed at the end of this letter.

It is also unjust to force Grandfield to prepare for a hearing which, from what I understand, may not even take place, given the ebb and flow of what the Debtor has intentionally put everyone through, in both state court and now in bankruptcy court. Furthermore, the cost to the Creditor-Grandfield, to prepare and conduct the hearing which will likely exceed \$250,000. In fact, counsel for the debtor has even admitted the hearing may not be necessary in the end:

*Despite agreeing to fund a portion of the Mencia settlement, the excess carrier ("RLI") continues to dispute and disclaim coverage for the Grandfield claim. Consequently, the Debtor intends to move forward with the hearing on the coverage summary judgment motion on June 2 as set down at the last conference. **While Grandfield's counsel has been unwilling to limit its claim to insurance coverage while the summary judgment is pending, if the Court finds that there is coverage, Grandfield has indicated that it will do so, and no estimation or objection hearing will be necessary.** (Emphasis added)*

The Debtor's counsel's statement to the effect that June 2, 2022, provides enough time for Grandfield to prepare for a hearing such as this (and the fact that he even advises Debtor to contest liability in light of the findings of causation by

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the Department of Buildings which are public record), is purely a litigation posturing technique to prevent the Creditor-Debtor from having enough time to prepare. In my opinion, his position is disingenuous, and not inconsistent with his client's conduct since before 2013.

Based on my experience as a Construction Lawyer and having been admitted to and practiced in in the following Courts, I can say without hesitation, that in my opinion, Debtor's counsel, in trying to force the Creditor-Grandfield to prepare and put on its case by June 2, when counsel for the Debtor himself indicates that the hearing may not even take place, is egregious.

I have been admitted and practiced in the following Courts:

- New York, 1990
- New Jersey, 1990
- U.S. District Court Eastern District of New York, 1991
- U.S. District Court Southern District of New York, 1991
- U.S. District Court Northern District of New York, 1998
- U.S. District Court District of New Jersey, 1990
- U.S. Court of Appeals 2nd Circuit, 1996
- U.S. Court of Appeals 9th Circuit, 1995
- Florida, 2017

At a minimum, the Creditor-Grandfield's case consists of the following witnesses:

**Experts:**

**Joe Jabour, PE** – The Cost of Repairs – causation

**Tom Petracca, PE** – Design Engineer – need for and type of repairs, order of work – causation – problems getting C|O which prevented leasing spaces and causation.

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**Rudi Sherbansky, PE**, expert in the NYC Building Code.

**Betsy Mak** – Real estate Appraiser and Lost Rents

**Richard Bylott**, CPA ABV – Forensic Accountant –His Report, (previously provided to debtors), but is now outdated, will merge the updated increased costs of construction materials and labor, update the lost rents, and prejudgment interest, and prejudgment interest, to come up with a current value for the total claim.

**Fact Witnesses**, some may need to be found and served with a subpoena:

**DANIEL HOM, P. E.** – The first engineer to inspect the damages factually and causation

**Glen Lau Kee, Esq.** – Had initial discussions with developers who wanted to excavate Grandfield's driveway

**Jane Lok and her father Yuk Leung Lok** – fact witnesses on all issues

**Jennifer Schiffer** – Owner of Tenant caterer during damages

**Bert Thomas**- from DOB issued the attached violation on causation.

**Southern Consulting Engineering, P.C., Glen J. Langer, P.E. Adverse Witness** – hired by Debtor, who designed emergency bracing to prevent my client's building from collapsing

**Toby Moskovitz – Adverse Witness**, she saw and admitted to principals of creditor that her project caused the damages and had agreed the Debtor would make the repairs.

**Michael Lichtenstein** – Adverse Witness – directed continuation of work despite lack of SOE drawings and existing damages (already caused by Debtor).

**Joe Kenny from All Island Concrete – Adverse Witness** – Supervised the excavation and underpinning work that caused the damages.

**Levi Boymelgreen – Adverse Witness** Worked for 96 Wythe and General Contractor, was aware of encroachments allowed exacerbation of damages, saw damages inside Grandfield's building

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**Jamal Sabaha and Epic testing -Adverse Witness**, Special Inspector for this job, who refused to stop the dangerous work and underpinning work that did not comply with plans, which caused damages and whose license was suspended sometime shortly after this job.

Thus, it is respectfully requested that a conference be conducted to set a fair schedule for the Creditor-Grandfield to prepare for a hearing once it is finally determined that a hearing will be necessary.

I thank Your Honor for your attention and courtesy in this matter.

Respectfully Submitted,

*Michael P. Berkley, Esq.*  
MICHAEL P. BERKLEY

Enc.

cc.: All counsel of record – *via e-filing on ECF*  
Grandfield Realty Corp. – *via e-mail*

# EXHIBIT A





THE CITY OF NEW YORK  
DEPARTMENT OF BUILDINGS

[Name

Yuk L Lok

]

Mailing Address

62 NORTH 11<sup>TH</sup> STREET  
Brooklyn, NY 11211

MANHATTAN  
280 Broadway  
New York, NY 10007  
(212)-566-5232

BRONX  
1932 Arthur Ave  
Bronx, NY 10457  
(718)-579-6905

BROOKLYN  
Municipal Building  
Brooklyn, NY 11201  
(718)-802-3675

QUEENS  
120-55 Queens Blvd.  
Kew Gardens, NY 11424  
(718)-286-0679

STATEN ISLAND  
Borough Hall  
St. George, NY 10301  
(718)-816-2210

You are hereby notified that there exists a violation in the subject premises as described below, and are ordered to remove this violation immediately. (If this violation is not corrected as required by law, you may be subject to criminal prosecution.) All inquiries and references to this violation should be directed to the respective borough.

*Robert D. Girolandini*  
COMMISSIONER OF BUILDINGS

Location <u>64 NORTH 11<sup>TH</sup> STREET</u>			Boro <u>K</u>		Violation Number				
					Date	Type	Dist.	No.	Quad.
Construction	No. of Stories	Block	Lot		<u>09, 04, 13</u>	<u>CEX</u>	<u>01</u>	<u>01</u>	<u>BT</u>
		<u>1</u>	<u>2295</u>	<u>09</u>					
Occupied at Time of Inspection as: <u>COMMERCIAL</u>					Complaint No. <u>3455278</u>			Docket No. <u>1</u>	
Section(s) Violated <u>1814.1.1</u> of the <u>Building Code</u>					Stop Work Order Issued <input type="checkbox"/>		CLASS 1 <input type="checkbox"/>	CLASS 2 <input checked="" type="checkbox"/>	CLASS 3 <input type="checkbox"/>

DESCRIPTION OF VIOLATION: THE Building AT THE ABOVE LOCATION HAS SUSTAINED  
CRACKS TO ITS FLOOR SLAB, INTERIOR AND EXTERIOR WALLS AS A RESULT OF THE ONGOING CONSTRUCTION (UNDERPINNING)  
AT 96 WYTHE AVE

REMEDY/REQUIREMENTS: COORDINATE REPAIRS

Filed By (Signature)

*Bert Thomas*

Print Name

BERT THOMAS

Badge Number

2523

AFFIDAVIT OF SERVICE BY MAIL - City and State of New York, County of BROOKLYN ss: The undersigned being duly sworn, deposes and says that I am an employee in the New York City Department Of Buildings, I am over 18 years of age, and on 9/25/13, I served this Notice of Violation by depositing a copy thereof, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York City, addressed to the party indicated above and addressed to each of the following persons at the addresses set forth after each name:

1. Yuk L. Lok

2. \_\_\_\_\_

Sworn to before me this 9Day of 26, 20 13

X *Nataniya Curry*  
NOTARY PUBLIC COMMISSIONER OF DEEDS

Nataniya Curry  
Commissioner of Deeds, City of New York  
No. 2-13133  
Cert. Filed in New York County  
Commission Expires on 4-1-2015

X *Amando Lucero*  
Signature

Print Full Name